IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.11.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.26335 of 2013

Micro Carbonates (P) Ltd,
Represented by Director Neeraj Mittal,
No.405, 11th Cross, IV Phase,
Peenya Industrial Area, Anekal Taluk,
Bangalore 560 058.

... Petitioner

Vs.

1.Commissioner of Customs (Appeals),
Customs House, 60, Rajaji Salai,
Chennai 600 001.

2.Assistant Commissioner of Custom (Refunds),
Office of the Commissioner of Customs,
Custom House, No.60, Rajaji Salai,
Chennai 600 001.

3.Customs Excise and Service Tax Appellate Tribunal,
No.26, Haddows Road,
South Zonal Bench,
Chennai 600 006.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records in Order in Appeal C CUS No.829/2013 dated 17.06.2013 in C3/443/R/2013-SEA passed by the first respondent and quash the same as arbitrary and illegal and direct the respondent to grant refund to the petitioner or any other appropriate writ or order or directions as this Court deem fit and proper.

For Petitioner : Mr.Joseph Prabakar

For Respondent : Mr.V.Sundareswaran,
Senior Standing counsel

ORDER

This writ petition has been filed challenging the impugned order passed by the respondent on 17.06.2013.

2. The learned counsel for the petitioner would submit that at paragraph No.3 of the order dated 26.03.2013 in W.A.No.426 of 2013 passed by the Hon'ble Division Bench of this Court, it has been held as follows:

> *"3. As the order under challenge is an appealable order and all the points raised in the writ petition as well as in this writ appeal can be agitated before the appellate forum, we are not inclined to entertain this writ appeal. However, if any appeal is filed by the appellant within a period of two weeks from today, the appellate authority is directed to consider the appeal and pass orders on merits and in accordance with law, within a period of three months from the date of filing appeal."*

3. By referring the above paragraph, the learned counsel for the petitioner would submit that the first respondent had construed that the appeal should have been filed by the petitioner within a period of two weeks from 26.03.2013 (the date on which the order was passed) and dismissed the appeal filed by the petitioner vide the said impugned order on the ground that it is barred by limitation.

4. Further, he would submit that the order copy of the writ appeal was received by the petitioner only on 26.04.2013 and in the said order copy, only two dates are available, one is 26.03.2013 (the date on which

the order was passed) and another one is 25.04.2013 (the date on which the Superintendent, Copyist Department, had signed the order). Hence, he would contend that under these circumstances, while taking the two weeks time mandated by the Hon'ble Division Bench of this Court into consideration, the word "today" mentioned therein should have been construed as "the date of issuance of the order copy" and not as "the date of passing of the order". In such case, since the appeal was filed within a period of 4 days from the date of receipt of the order copy i.e., on 29.04.2013, the said appeal is filed within the time limit and thus, he prays to set aside the impugned order passed by the first respondent.

5. In reply, the learned counsel for the respondent would submit that in the aforesaid order passed by the Hon'ble Division Bench, it has been mentioned that the appeal should be filed by the petitioner within a period of two weeks from today, i.e., 26.03.2013 (the date of passing of the said order). However, since the petitioner had filed the said appeal only on 29.04.2013, the respondent had dismissed the appeal as it is barred by limitation.

6. Heard the learned counsel for the petitioner and the respondent and also perused the materials available on the record.

7. The only issue that has to be decided in the present case is as to whether the word "*today*" mentioned in the order passed by the Hon'ble Division Bench refers to the *date on which the order was passed* or to the *date on which the order was issued to the petitioner (i.e., the date on which the order was made ready)*.

8. This Court is of the considered view that the petitioner will be able to file the appeal only when the order copy is received by them, otherwise, the respondent will not entertain the appeal. Therefore, for all practical purposes, the word "today" in the order passed by the Hon'ble Division Bench has to be construed as the date on which the order was ready to issue. In such view of the matter, the word "*today*" mentioned in the said order refers to *the date on which the order copy was issued to the petitioner*. Hence, in the present case, since, the order copy was

received by the petitioner only on 25.04.2013, the appeal, which was filed on 29.04.2013, was filed well within the period of limitation prescribed by the Hon'ble Division Bench of this Court.

9. From the above discussion, the submission of the respondent that the impugned order, which was passed on the ground that the appeal is barred by limitation, is not sustainable. Hence, this Court is inclined to set aside the impugned order passed by the first respondent on the aspect of limitation.

10. At this juncture, it was brought to the knowledge of this Court by the learned counsel for the petitioner that when an appeal is dismissed on the ground that it is barred limitation, thereafter, the Appellate Authority cannot decide the same on merits. Thus, the impugned order is liable to be set aside in entirety.

11. Taking into consideration of all these aspects, this impugned order is set aside in entirety. Further, this Court remits the matter back to

the first respondent for re-consideration and the first respondent is directed to decide the matter in accordance with law.

12. With the above directions, this writ petition is disposed of. No costs.

17.11.2023

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
nsa

To

1.Commissioner of Customs (Appeals),
Customs House, 60, Rajaji Salai,
Chennai 600 001.

2.Assistant Commissioner of Custom (Refunds),
Office of the Commissioner of Customs,
Custom House, No.60, Rajaji Salai,
Chennai 600 001.

3.Customs Excise and Service Tax Appellate Tribunal,
No.26, Haddows Road,
South Zonal Bench,
Chennai 600 006.

KRISHNAN RAMASAMY.J.,

nsa

W.P.No.26335 of 2013

17.11.2023